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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTOINE E. MODICA, SR.,

Plaintiff,

No. 2:11-cv-2163 DAD P

vs.

B. COX, et al.,

Defendants.

ORDER

\_\_\_\_\_ /

Plaintiff, a state prisoner proceeding pro se with a civil rights action, has requested a court order authorizing him to conduct discovery by sending written questions to an inmate witness and obtaining answers from that inmate witness in the form of an affidavit. In addition, plaintiff requests the appointment of counsel.

As to plaintiff's request to conduct discovery by sending written questions to inmate Lashawn Thomas, plaintiff states that inmate Thomas provided a declaration that is attached to plaintiff's amended complaint but that he has since lost contact with Mr. Thomas since plaintiff's was transferred to Avenal State Prison on May 1, 2012. (Doc. No. 29 at 2.) The court will construe plaintiff's request in this regard as a motion seeking leave to serve depositions by written questions on a deponent who is confined in prison pursuant to Rule 31(a)(2)(B) of the Federal Rules of Civil Procedure. However, plaintiff has not complied with

1 the notice requirements of that rule. See Rule 31(a)(3) (requiring among other things that the  
2 notice of deposition upon written questions set forth the officer before whom the deposition will  
3 be taken). Moreover, the court notes that plaintiff has not indicated what relevant information he  
4 believes Mr. Thomas can provide beyond that already provided in the declaration referred to nor  
5 does he explain the basis for his belief in that regard. See Doc. No. 13 at 20-21. Therefore,  
6 plaintiff's request to conduct discovery in this fashion will be denied at this time.

7 As to plaintiff's request for the appointment of counsel, for the reasons set forth in  
8 the court's June 13, 2012 order, that request will also be denied.

9 Accordingly, IT IS HEREBY ORDERED that:

10 1. Plaintiff's December 7, 2012 request for a court order authorizing him to seek  
11 written answers from another inmate to questions plaintiff wishes to pose (Doc. No. 29) is  
12 denied; and

13 2. Plaintiff's December 7, 2012 motion for appointment of counsel (Doc. No. 30)  
14 is denied.

15 DATED: December 18, 2012.

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19 DALE A. DROZD  
20 UNITED STATES MAGISTRATE JUDGE

21 DAD:kly/4  
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